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est bidder and no more sold than is necessary to pay the debt.²⁷ Furthermore, even had the controversy arisen between the mortgagee and another creditor it seems that, since the attachment was dismissed before execution, the result might well have been the same for the attachment would not of itself furnish the intent essential to constitute a waiver nor would it necessarily have the effect to so mislead as to render the mortgagee's conduct in subsequently foreclosing the mortgage inequitable as to the creditor's rights.

INJUNCTIVE RELIEF AGAINST ILLEGAL TAXATION.—In the exercise of its restraining power against the collection of illegal taxes equity is confronted by a situation which presents conflicting considerations. On the one hand, the imperative necessity that the collection of governmental revenues be unobstructed deters the court from granting its relief,¹ while on the other hand, the obvious impropriety of imposing upon a citizen the duty of paying an illegal and often fraudulent tax tends, under certain circumstances, to demand an exercise of its restraining power.² Although in some instances the latter consideration has prevailed thereby inducing the courts to great liberality in granting injunctive relief, most courts, treating the former as more important, have held that equity should, in such cases, act with unusual caution and consequently should extend its aid only in the clearest cases.³ The unavoidable delay incident to such procedure,⁴ together with the impotency of a court of equity to deal conclusively with the situation, in that having enjoined the collection of a tax it has no power to assess a new one,⁵ has, therefore, induced legislation prohibiting the use of injunctions for such purposes.⁶ Where, moreover, only part of a tax is illegal, similar considerations have caused the courts to require payment of the legal portion as a condition precedent to the relief sought.⁷

Subject, however, to this peculiar conservatism, the ordinary rules determinative of equitable jurisdiction and relief are applicable in cases of illegal taxation. Consequently, it is generally held that the mere irregularity or even illegality of the tax, whether it be on realty,⁸ or on personalty,⁹ affords no ground for interference. In order to invoke equitable aid, then, a complainant must show that he has an interest which is peculiarly threatened by the illegal tax¹⁰ and also that the legal remedy provided for the redress of this wrong

²⁷*Frost v. Shaw* (1854) 3 Oh. St. 270.

¹*Stevens v. N. Y. & O. M. R. R. Co.* (1875) 13 Blatch. 104; *Cody v. Lennard* (1872) 45 Ga. 85.

²*Allen v. B. & O. R. R. Co.* (1884) 114 U. S. 311.

³*High, Injunctions* §§ 484, 485; *Waterbury Bank v. Lawler* (1878) 46 Conn. 243.

⁴*Cooley, Taxation* 1423.

⁵*State R. R. Tax Cases* (1875) 92 U. S. 576.

⁶*Snyder v. Marks* (1883) 109 U. S. 189.

⁷*Merrill v. Humphrey* (1871) 24 Mich. 170; *City Council v. Sayre* (1880) 65 Ala. 564.

⁸*Ogden City v. Armstrong* (1897) 168 U. S. 224.

⁹*Dows v. City of Chicago* (1870) 11 Wall. 108. But see *City of Delphi v. Bowen* (1878) 61 Ind. 29.

¹⁰*Robins v. Latham* (1896) 134 Mo. 466.

is clearly inadequate.¹¹ Thus, equity will ordinarily grant relief where the tax has been fraudulently assessed against the property in question,¹² or where, because of some peculiar circumstance, as the insolvency of the collector¹³ or the impossibility of bringing an action against the state,¹⁴ the recovery of the tax money is impossible. In like manner, if the complainant is in danger of suffering some irreparable damage as the destruction of a corporate franchise¹⁵ or a serious interruption of business,¹⁶ equity will ordinarily exercise its restraining power. A less novel situation justifying equitable interference is presented where the enforcement of the tax would operate to create a cloud on the title to real estate.¹⁷ The courts are not, however, agreed as to what constitutes such a cloud. The prevailing view would seem to indicate that if the invalidity of the tax must necessarily appear upon any attempt to enforce a claim depending on it, no cloud exists.¹⁸ It is submitted, however, that any recorded claim even if absolutely void on its face might well be considered sufficient to warrant equitable interference,¹⁹ in that even such a claim must necessarily affect the marketability of the property in the eyes of ordinarily prudent purchasers.

Although the prevention of a multiplicity of suits is generally recognized as a proper ground for equitable relief,²⁰ the courts are not agreed as to the extent of its application. It is, of course, obvious that when a single complainant, having established the illegality of the tax, must necessarily resort to repeated suits at law in order to enforce his rights the remedy thus afforded is plainly inadequate and equity should extend its aid.²¹ Where, on the other hand, each individual complainant is amply protected at law and the only circumstance suggesting equitable relief is the fact that all other tax payers similarly situated would also be compelled to resort to actions at law in order to obtain redress, the courts are not agreed as to the propriety of granting an injunction. The mere fact that other tax payers would be compelled to vindicate their rights as to distinct and independent claims at law obviously cannot effect the adequacy of any particular complainant's legal remedy nor theoretically give him any greater equity.²² Many courts, recognizing this fact, and influenced, moreover, by arguments of public policy especially applicable to these cases,²³ have refused to assume jurisdiction. The more recent decisions, however, seem to favor the granting of injunctive relief on the sole ground that by a proper determination of the ques-

¹¹Heywood v. City of Buffalo (1856) 14 N. Y. 534.

¹²O. & C. R. R. Co. v. Jackson Co. (1901) 38 Ore. 589.

¹³Richardson v. Scott (1872) 47 Miss. 236.

¹⁴Bank of Omaha v. Douglass Co. (1873) 3 Dill. 298.

¹⁵Osborne v. U. S. Bank (1824) 9 Wheat. 738.

¹⁶Union Pac. R. R. Co. v. McShane (1874) 3 Dill. 303.

¹⁷Alvord v. City of Syracuse (1900) 163 N. Y. 158.

¹⁸Byrne v. Drain (1900) 127 Cal. 663.

¹⁹Holland v. Mayor of Baltimore (1857) 11 Md. 186.

²⁰California & O. Land Co. v. Gowen (1892) 48 Fed. 771.

²¹Union & Planters' Bank v. City of Memphis (1901) 111 Fed. 561.

²²Dodd v. City of Hartford (1856) 25 Conn. 232; Ayres v. Lawrence (N. Y. 1872) 63 Barb. 454.

²³Harkness v. Board of Public Health (D. C. 1873) 1 McArthur 121.

tion of law involved unnecessary litigation may thereby be avoided.²⁴ While on strict theory the argument of the earlier cases appears convincing, yet expediency and the general convenience of all parties concerned amply justify the position contended for in the later decisions.

This reasoning was recently invoked in an action brought by several tax payers to restrain the collection of an alleged illegal road tax. *Byers v. Hempfield Tp.* (Pa. 1910) 75 Atl. 415. The court very properly distinguished between a tax which is merely irregular and one which, because of some inherent illegality, is absolutely void,²⁵ and, having found that the defect in question went to the very foundation of the assessment, ordered an injunction. Although it is difficult to see why each complainant did not have an adequate remedy at law, yet, according to the prevailing view, the exercise of equitable jurisdiction to prevent unnecessary litigation was fully justified, since the complainants clearly showed a community of interest not only in the relief sought but also in the question of law to be determined.

²⁴*Williams v. County Bank* (1885) 26 W. Va. 488; *McTwiggan v. Hunter* (1895) 18 R. I. 776. Some courts require that a complainant allege that he files his bill in behalf of himself and all persons similarly situated. *Williams v. County Court supra*.

²⁵*Ogden City v. Armstrong supra*.